

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COTTON CENTER INDEPENDENT SCHOOL)	
DISTRICT)	
)	
Late-Filed Application For Renewal of)	File No. 0005162893
Educational Broadband Service Station WLX429)	
)	
Request for Waiver of Section 1.949(a) of the)	
Commission's Rules)	
)	
Notification of Completion of Construction of)	File No. 0005173389
Educational Broadband Service Station WLX429)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 28, 2014

Released: March 28, 2014

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* denies a request for waiver to allow late filing of an application for renewal of an Educational Broadband Service (EBS) license. We conclude that the licensee has not met the standard for a waiver. We also dismiss as moot a construction notification filed for the same station.

II. BACKGROUND

2. The license for EBS Station WLX429, licensed to Cotton Center Independent School District (Cotton Center), was last renewed on February 19, 2002, and expired on February 19, 2012.¹ A renewal reminder notice was sent to Cotton Center on November 28, 2011.² Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.³ Cotton Center failed to do so, not filing until April 12, 2012,⁴ and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of Cotton Center's late-filed application.

¹ See File No. BRIF-20011002AAG (granted Feb. 19, 2002).

² Renewal Reminder Letter, Ref. No. 5261663 (Nov. 28, 2011).

³ 47 C.F.R. § 1.949(a).

⁴ File No. 0005173389 (filed Apr. 12, 2012) (Renewal Application).

3. Cotton Center indicates that it missed the filing deadline because of a “miscommunication and tracking error.”⁵ Cotton Center acknowledges that as the licensee it is responsible for submitting a timely renewal application, and it claims it has taken corrective measures to prevent future deadlines from being missed.⁶

4. All EBS licensees were required to demonstrate substantial service on or before November 1, 2011.⁷ The Commission defines substantial service as a level of service, which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.⁸ A BRS or EBS licensee may make a showing based on meeting the definition of substantial service or based on meeting one of the general safe harbors provided by the Commission in Section 27.14(o)(1) of the Commission’s Rules.⁹ In addition, an EBS licensee may make a showing under the educational “safe harbor” the Commission specifically adopted for EBS licensees in Section 27.14(o)(2) of the Commission’s Rules.¹⁰ Many EBS licensees have demonstrated substantial service by meeting this safe harbor.

5. Cotton Center received extensions until April 29, 2012 to demonstrate substantial service.¹¹ On April 20, 2012, Cotton Center filed a demonstration of substantial service for Station WLX429.¹² Cotton Center, with the assistance of its lease partner, Utopian Wireless Corporation, has built and is operating a point-to-point link on WLX429’s licensed channels.¹³ The link is being used to provide high-speed data connectivity in Cotton Center’s school district between its main school building and its administration building.¹⁴ The link allows Cotton Center to more widely distribute access to its own internal network(s) and the public internet to faculty, students and other authorized users.¹⁵

⁵ Renewal Application, Cotton Center Independent School District, License Renewal Waiver Request (Waiver Request).

⁶ *Id.*

⁷ See National EBS Association and Catholic Television Network, *Memorandum Opinion and Order*, 26 FCC Rcd 4021 (WTB 2011).

⁸ 47 C.F.R. § 27.14(o).

⁹ An EBS or a BRS licensee could meet the substantial service requirement by showing that it meets one or more of the following five general safe harbors: that it constructed six permanent links per one million people for licensees providing fixed point-to-point services; that it provided coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services; that it provided service to “rural areas” or areas with limited access to telecommunications services; that it provided specialized or technologically sophisticated service; or that it provided service to niche markets. 47 C.F.R. § 27.14(o)(1).

¹⁰ Under the educational “safe harbor,” an EBS licensee is deemed to be providing substantial service with respect to all channels it holds if: it is using its spectrum (or spectrum to which its educational services are shifted) to provide educational services within its GSA; the services it provides are actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students; and the level of service it provides meets or exceeds the minimum usage requirements specified in the Commission’s rules. 47 C.F.R. § 27.14(o)(2).

¹¹ See File Nos. 0004935720 (granted Dec. 19, 2012), 0005010122 (granted Jan. 4, 2012).

¹² File No. 0005173389 (filed Apr. 20, 2012) (Substantial Service Notification).

¹³ Substantial Service Notification, WLX429 Demonstration of Substantial Service at 2.

¹⁴ *Id.*

¹⁵ *Id.*

III. DISCUSSION

6. The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁶ Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁷ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁸ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Cotton Center's Waiver Request should be denied.¹⁹

7. Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.²⁰ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.²¹ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²²

8. Cotton Center's excuse that there was a miscommunication and tracking error does not justify a waiver. The Commission has repeatedly held that each licensee is solely responsible for knowing the term of its license and submitting a renewal application in a timely manner.²³ Accordingly, we find that Cotton Center has not offered justification for a waiver.

¹⁶ Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹⁷ *Id.* at 11486 ¶ 22.

¹⁸ *Id.* at 11485 ¶ 22.

¹⁹ See, e.g., WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

²⁰ 47 C.F.R. § 1.949(a).

²¹ 47 C.F.R. § 1.955(a)(1).

²² 47 C.F.R. § 1.925(b)(3).

²³ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165, 14248 ¶ 217 (2004) ("As an initial matter, the Commission has stated that each licensee is fully responsible for knowing the term of its license and for filing a timely renewal application."); Daniel Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission's Rules, *Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21944, 21972-21973 ¶ 53 (1998) (holding that "[i]t is the responsibility of each

(continued....)

9. We recognize that Cotton Center is currently using the station to provide high speed data connectivity between two buildings. We find that Cotton Center's use of the station does not support a waiver for two reasons. First, Cotton Center did not file its Substantial Service Notification until two months after its license expired. It therefore appears that Cotton Center voluntarily assumed the risk of constructing facilities on an expired license. Second, the point-to-point link in question is very short.²⁴ Cotton Center therefore could use several spectrum bands other than EBS to maintain the link, including microwave spectrum licensed under Part 101 of the Commission's rules, or unlicensed spectrum.

10. We recognize that the Broadband Division (Division) has issued a series of orders granting waivers to allow processing of late-filed EBS renewal applications. This case is distinguishable from those cases. For example, in 2007, the Division granted waivers for 41 late-filed EBS renewal applications because granting the waivers would facilitate the transition of EBS and the Broadband Radio Service to the new band plan adopted by the Commission in 2004.²⁵ That rationale is no longer applicable because the transition to the new band plan has been successful and is virtually complete. In 2009, the Division granted waivers for 116 late-filed EBS renewals.²⁶ The waivers were based on the fact that the Mass Media Bureau had a policy of not accepting renewal applications from unconstructed stations and that while the Wireless Telecommunications Bureau had changed that policy, it had not notified applicants of that policy change.²⁷ That rationale is no longer applicable because the policy change occurred ten years ago and all existing EBS licensees have filed renewal applications since the policy change. Furthermore, since 2009, most EBS stations have been able to demonstrate substantial service and are actively using their stations to provide a variety of broadband and educational services. Given those changes in circumstances, we do not view the rationale in the orders issued in 2007 or 2009 to be applicable today. Finally, Cotton Center's situation is distinguishable from applicants who filed timely renewal applications but had those applications dismissed for failure to respond to return letters. In those cases, we were able to conclude that the licensees had overall been diligent.²⁸

11. In view of the foregoing, we find that grant of Cotton Center's requested waiver is not in the public interest. We therefore deny its request for waiver of Section 1.949(a) of the Commission's rules and direct dismissal of its Renewal Application. A license automatically terminates without further Commission action if it expires and is not renewed.²⁹ We therefore order dismissal of the Substantial Service Notification as moot.

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licensee to apply for renewal of its license prior to the expiration date of the license," and that "failure of a licensee to receive a [renewal form] from the Commission is no excuse for failure to file a renewal application.")

²⁴ Based on the coordinates provided in the Substantial Service Notification, the link in question is slightly over 200 feet long.

²⁵ See Forty-one Late-Filed Applications For Renewal of Educational Broadband Service Stations, *Memorandum Opinion and Order*, 22 FCC Rcd 879, 882-883 ¶ 7 (WTB BD 2007).

²⁶ See 116 Late-Filed Applications For Renewal of Educational Broadband Service Stations, *Memorandum Opinion and Order*, 24 FCC Rcd 8108 (WTB BD 2009).

²⁷ *Id.* at 8116-8117 ¶ 24.

²⁸ See Unified School District #298, *Memorandum Opinion and Order*, DA 14-190 (WTB BD rel. Feb. 12, 2014); Unified School District #392, *Memorandum Opinion and Order*, 28 FCC Rcd 6373 (WTB BD 2013); Burlington College, *Memorandum Opinion and Order*, 27 FCC Rcd 15267 (WTB BD 2012); Garnett Unified School District #365, *Memorandum Opinion and Order*, 27 FCC Rcd 13086 (WTB BD 2012); Somerville Independent School District, *Order on Reconsideration*, 27 FCC Rcd 6063 (WTB BD 2012).

²⁹ See 47 C.F.R. § 1.955(a)(1).

IV. CONCLUSION AND ORDERING CLAUSES

12. For the reasons discussed above, we find that Cotton Center has not justified a waiver of Section 1.949(a) of the Commission's rules to allow consideration of its late-filed renewal application. We therefore deny the Waiver Request and direct dismissal of the Renewal Application and the Substantial Service Notification.

13. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.925 and 1.949(a) of the Commission's rules, 47 C.F.R. §§ 1.925, 1.949(a), that the request for waiver filed by Cotton Center Independent School District on April 12, 2012 in connection with File No. 0005162893 IS DENIED.

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.946 and 1.949 of the Commission's rules, 47 C.F.R. §§ 1.946, 1.949, that the licensing staff of the Broadband Division SHALL DISMISS the application for renewal of Educational Broadband Service Station WLX429 filed by Cotton Center Independent School District on April 12, 2012 (File No. 0005162893) and the notification of completion of construction filed by Cotton Center Independent School District on April 12, 2012 (File No. 0005173389) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

15. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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